

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY L. HAWKINS,	§	
	§	No. 315, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0907000994
Appellee.	§	

Submitted: July 13, 2010
Decided: August 25, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 25th day of August 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) On December 14, 2009, the appellant, Gregory L. Hawkins, pled guilty to Offensive Touching and Criminal Trespass in the First Degree. The Superior Court sentenced Hawkins to a total of thirty days at Level V suspended for two years at Level II probation.

(2) On April 10, 2010, while on probation, Hawkins was arrested and charged with Assault in the Third Degree and Criminal Mischief ("new

charges”).¹ As a result of his arrest, an administrative warrant issued on April 10, 2010, alleging that Hawkins had violated a condition of his Level II probation by “commit[ing] a new criminal offense . . . during the supervision period.”

(3) On April 23, 2010, after a “fast track” VOP hearing,² Hawkins was adjudged guilty of VOP and was sentenced to thirty days at Level V suspended for fifty-eight days at Level IV VOP Center followed by one year of Level III supervision. Although notified of his right to appeal by his defense counsel, Hawkins did not appeal his VOP conviction and sentence.³

(4) On May 19, 2010, the Court of Common Pleas dismissed the new charges against Hawkins.⁴ Two days later, Hawkins filed a motion for reduction of sentence. Hawkins sought a reduction of his April 23, 2010 VOP sentence on the basis that the new charges were dismissed.

(5) By order dated May 25, 2010, the Superior Court summarily denied Hawkins’ sentence reduction motion on the basis that “[t]he sentence

¹ *State v. Hawkins*, Del. Com. Pl., Cr. ID No. 1004007560.

² See Del. Code Ann. tit. 11, § 4334(c) (2007) (providing that “upon arrest by warrant . . . the court shall cause the probationer to be brought before it without unnecessary delay, for a hearing on the violation charge”).

³ The Superior Court record reflects that Hawkins was informed in writing of the thirty-day appeal period by defense counsel of record. Del. Supr. Ct. R. 26(k). See docket at 26, *State v. Hawkins*, Del. Super., Cr. ID No. 0907000994 (April 23, 2010) (filing of “advice regarding appeal” form).

⁴ *State v. Hawkins*, Del. Com. Pl., Cr. ID No. 1004007560, Welch, J. (May 19, 2010) (dismissing case at trial for failure to prosecute).

was imposed after a violation-of-probation hearing was held, and the Court determined that [Hawkins] had violated the terms of [his] probation. The sentence is appropriate for all the reasons stated at the time of sentencing.” This appeal followed.

(6) Upon review of the denial of a motion for reduction of sentence, this Court will not interfere with the Superior Court’s decision unless it appears that the sentence exceeded the maximum authorized by statute or was imposed on the basis of inaccurate or unreliable information.⁵ In this case, Hawkins does not argue, nor does the record reflect, that the Superior Court imposed a sentence beyond the maximum allowed by law.⁶ Second, because he did not provide this Court with a transcript of the VOP hearing, Hawkins cannot demonstrate (nor does he appear to argue) that the VOP sentence was imposed on the basis of inaccurate or unreliable information.⁷

⁵ *Melody v. State*, 2003 WL 1747237 (Del. Supr.) (citing *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992)).

⁶ On an adjudication of VOP, the Superior Court has the authority to require the probationer “to serve the sentence originally imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.” Del. Code Ann. tit. 11, § 4334(c).

⁷ Hawkins did not request the preparation of transcript for this appeal, and a transcript of the VOP hearing is not otherwise a part of the record. Hawkins’ failure to provide the Court with a transcript of the VOP hearing precludes appellate review. *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

(7) The argument Hawkins presents on appeal, *i.e.*, that the May 19, 2010 dismissal of the new charges requires a reduction of his April 23, 2010 VOP sentence, is without merit. The Superior Court has the authority to revoke probation and to impose sentence on the basis that the probationer has been charged with new criminal conduct⁸ notwithstanding dismissal of the criminal charges involving the same conduct that gave rise to the violation of probation hearing.⁹

NOW, THEREFORE, IT IS HEREBY ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁸ See, *e.g.*, *Downing v. State*, 2002 WL 1751674 (Del. Supr.); *Evans v. State*, 2002 WL 742607 (Del. Supr.). Cf. *Cruz v. State*, 990 A.2d 409 (Del. 2010) (affirming VOP conviction and sentence notwithstanding probationer's prior acquittal of new criminal charges on which VOP was based).

⁹ Cf. *Kurzmann v. State*, 903 A.2d 702, 717 (Del. 2006) (affirming VOP conviction and sentence notwithstanding State's concession of insufficient evidence to prosecute new criminal charge on which VOP was based). *Contra Perry v. State*, 741 A.2d 359, 364 (Del. 1999) (reversing for new VOP hearing when State proceeded with VOP using unproven criminal charges as basis for alleged VOP and probationer was not afforded "minimum requirements of due process").